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BEFORE THE ARIZONA POWER PLAN
AND LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY, IN
CONFORMANCE WITH THE
REQUIREMENTS OF ARIZONA REVISED
STATUTES 40-360 ET SEQ., FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AUTHORIZING THE
OCOTILLO MODERNIZATION PROJECT,
WHICH INCLUDES THE INSTALLATION OF
FIVE 102 MW GAS TURBINES AND THE
CONSTRUCTION OF TWO 230-KILOVOLT
GENERATION INTERCONNECTIONS AND
OTHER ANCILLARY FACILITIES, ALL
LOCATED WITHIN THE BOUNDS OF THE
EXISTING OCOTILLO POWER PLANT
SITUATED ON PROPERTY OWNED BY
ARIZONA PUBLIC SERVICE COMPANY
AND LOCATED AT 1500 EAST UNIVERSITY
DRIVE, TEMPE, ARIZONA, IN MARICOPA
COUNTY.

Docket No. L- _____

Case No. L-00000D-14-0292-00169
Arizona Corporation Commission**DOCKETED**

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RUCO'S MEMORANDUM

In accordance with the request of the Chairman of the Line Siting Committee, the Residential Utility Consumer Office, ("RUCO") hereby submits the following memorandum on the issue of a party's ability to advocate on the issue of need as it may impact: 1) the need to go beyond the site to consider generation and transmission not actually on the property; 2) rates. The other issue this memorandum will include is where the line is drawn on the testimony that may be presented to the Committee on these issues.

THE COMMITTEE SHOULD CREATE A FULL RECORD AND LEAN TOWARDS INCLUDING RATHER THAN EXCLUDING EVIDENCE AND ACCORDINGLY THE COMMITTEE SHOULD INCLUDE CONSIDERATION OF ALTERNATIVES BEYOND THE SITE IN DETERMINING NEED.

1 A.R.S. Section 40-360 et seq. provides that the Siting Committee and the Commission
2 shall exercise their respective authority and discretion, based upon the evidentiary record
3 developed by the Siting Committee. A.R.S. 40-360.04(D) provides
4

5 "The committee shall review and consider the transcript of the
6 public hearing or hearings and shall by a decision of a majority of
7 the members issue or deny a certificate of environmental
8 compatibility. . ."

9 A.R.S. 40-360.07 (A) and (B) instructs that the Commission shall review the Siting
10 Committee's decision "on the basis of the record," which has been transmitted from the Siting
11 Committee to the Commission. The Commission may then ". . . confirm, deny or modify any
12 certificate granted by the committee."

13 The evidentiary record developed by the Siting Committee should be as inclusive as
14 possible of evidence pertaining to proposed costs, technology, and the environment
15 associated with the need for electrical power proposed to be served by the generation and/or
16 transmission facilities which are the subject of a given CEC Application. Only in that manner
17 can the members of the Siting Committee and the Commission be in a position to make the
18 fully informed decisions contemplated by A.R.S. §§ 40-360 et seq.

19 The evidence allowed in a Siting proceeding should not however, have no bounds.
20 The Arizona Rules of Evidence, Rule 401, defines relevant evidence as:

21 Evidence is relevant if:

22 (a) It has any tendency to make a fact more or less probable than it would be without the
23 evidence: and

24 (b) The fact is of consequence in determining the action.

1 RUCO believes that the Committee should be guided by what it believes is “relevant” to
2 the balance of what is needed, why it is needed, what is economical and the environmental
3 impact. RUCO does not believe that any party should be precluded from offering evidence
4 which would make any of the above consideration more or less probable.

5 The Committee should limit the scope of the testimony to the extent it addresses issues
6 that are not what the Committee believes are considerations in balancing the above criteria.
7 However, the Committee needs to be mindful that it is creating the record upon which the
8 Commission will act, and that the statute sets the standard under which the Commission must
9 act.
10

11 ARS Section 40-360.07 requires the Commission, in its review of a Line Siting
12 Committees Decision where requested, to balance in the broad public interest, the need for an
13 adequate, economical and reliable supply of electric power with the desire to minimize the
14 effect thereof on the environment and ecology of this state. In determining what is economical
15 and what will minimize the environmental impacts, the Arizona Courts have given the
16 Commission wide discretion. The Arizona Court of Appeals expounded on the Commission’s
17 discretion in *Grand Canyon Trust v. Arizona Corp. Comm’n*, 210 Ariz. 30, 107 P.3d 356
18 (App. 2005). In *Grand Canyon* the Court noted:

19 However, the statute itself does not require that the need for power
20 be determined based solely on the power needs of in-state consumers.
21 Nor is there anything in the statute that requires that the “need” for the
22 “adequate, economical, and reliable” power that is to be balanced
23 against the desire to minimize environmental impacts should be
24 determined in any particular way. ^{FN11} The statute gives the
Commission the obligation to conduct the balancing in the broad public
interest and leaves considerable discretion to the Commission in how to
determine need under the statute. A.R.S. § 40-360.07(B).

1 *Grand Canyon*, 210 Ariz. 38, 107 P.3d 356, 364.

2 In fact, the Commission is obligated to consider the balance in terms of the broad public
3 interest. The Courts have made it clear that the Commission can go beyond the site in its
4 consideration.

5 Nor, as we have observed, does the statute require the
6 Commission to determine "need" in any particular fashion. The
7 *Commission thus may consider the market for power in determining the*
8 *need for power, and it is difficult to imagine how the Commission could*
adequately assess the need for power without at least some reference
to the market demand. (Emphasis Added).

9 *Id.*

10 RUCO does not believe that the Applicant's proposal was designed to be economical
11 nor designed to have a minimal environmental impact. RUCO intends to discuss the issue of
12 the criteria the Applicant used in coming up with its recommendation. It would be proper for
13 RUCO to go through the criteria and show other instances or criteria which may be more
14 economical and/or impact the environment less than the main proposal. Likewise, the parties
15 should be able to testify on other options which would have less if not any environmental
16 impact and/ or could be more economical while at the same time addressing the Company's
17 need for the additional power.

18 It is hard to imagine how RUCO can make its case without showing alternate proposals
19 and the applicant's consideration or lack of consideration of any other alternatives. Nowhere
20 in the Statute or in case law (at least that RUCO is aware) is a party limited in any way to go
21 beyond the site in its consideration. In fact, doing so is not only consistent with balancing the
22 competing interests it is also within the Commissions wide discretion on the subject. *Grand*
23 *Canyon, supra.*
24

1 RUCO also believes and intends to show through its witnesses that the Company used
2 selective criteria that was not designed to consider other alternatives nor designed to have an
3 environmentally minimal impact. Specifically, among several other things, by reducing the
4 selection criteria to a site located within the Phoenix load pocket and by requiring a short
5 development time frame, the Ocotillo site was virtually guaranteed. In fact, RUCO believes
6 and will show that the criterion used was designed to result in the Applicant's
7 recommendation. If proven, such a recommendation would not be in the public interest.
8

9 The balance the Commission must consider dovetails in to at least several of the factors
10 required to be considered by the Committee in issuing a Certificate of Environmental
11 Compatibility. Section 40-360.06 sets forth those factors. One such factor, Section 40-360.06
12 (7) includes the technical practicability of achieving a proposed objective and the previous
13 experience with equipment and methods available for achieving a proposed objective. The
14 applicant's proposal includes equipment and methods for achieving its objective of replacing
15 old infrastructure and adding new infrastructure. The Committee can and should consider the
16 practicality of the proposed technology as well as other types of equipment and methods that
17 are more economical and less environmentally invasive to achieve the Company's objectives.
18

19 Another factor Section 40-360.06 (6) includes the environment and another factor to be
20 considered by the Committee is the estimated cost with an eye to the reality that any large
21 increase in cost represents a higher cost of electricity to the customer. ARS Section 40-360.06
22 (08). Each aspect of RUCO's case addresses one of these three factors and therefore should be
23 considered by the Commission. It is clear that while the Committee is not subject to the same
24 standard of review as the Commission, the Committee actually creates the record for the

1 Commission to review. It is entirely consistent with the case law that the record should be
2 inclusive – not exclusive, and allow for the Commission to make a full and informed decision.
3 See *Grand Canyon, supra*.

4
5 **THE FACTORS TO BE CONSIDERED IN THE PENDING APPLICATION**
6 **INCLUDE THE RATE IMPACT TO THE RATEPAYER AND THE TESTIMONY**
7 **SHOULD BE LIMITED IN SCOPE**

8
9 On the issue of cost and the impact on the ratepayer, the relevant line siting statute is not
10 ambiguous. One of the factors to be considered is the cost of the proposal.

11 Specifically, Section 40-360.06 (8) provides:

12 The estimated cost of the facilities and site as proposed by the
13 applicant and the estimated costs of the facilities and site as
14 recommended by the committee, recognizing that any significant
15 increase in costs represents a potential increase in the cost of electric
16 energy to the customers or the applicant.

17 Clearly, the Committee needs to consider the cost of the facilities as well as the impact
18 that the proposed increase will have on the applicant's customers. The statute does not specify
19 any standard or level regarding the cost impact, only that it be a consideration.

20 RUCO's intent in becoming involved in this proceeding is not and never was to dissect
21 the rate impact or to present it as support for its position. RUCO believes that if in fact it is
22 shown that the Application is necessary, economical and minimally effects the environment,
23 then ratepayers should pay for the increase. The exact amount that the ratepayers should pay is
24 the subject of another, entirely different proceeding.

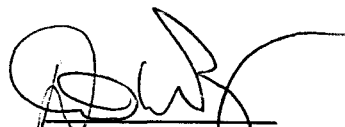
1 However, that is not to say that the cost consideration should be excluded. For instance,
2 if the Applicant did not go and consider whether it could serve the Phoenix load pocket by
3 other more economical means, as RUCO believes, the Committee would have reason to deny
4 the Application. The parties should be able to present testimony on this issue if they believe it
5 is an issue and should not be limited in scope.

6 **CONCLUSION**

7 A review of the law here gives the Committee and the Commission wide discretion to
8 consider the economics and the environmental concerns associated with a CEC proposal. After
9 all, why the Commission or the Committee want to approve what would will probably cost
10 ratepayers over \$1 billion after the Company earns its return on a project that is not economical
11 and/or that does not have a minimal environmental impact. The Commission has always
12 wanted more information as opposed to less information. Perhaps that is why its rules provide
13 for so much discretion when it comes to the application of the rules of evidence. Given the
14 magnitude of the proposal, the Committee should be concerned with a complete record.

15 In truth, RUCO's case here is nothing more than a rebuttal to what the Company has
16 raised in its application and exhibit binder. The Company has opened the door on many
17 subjects and no party should be excluded in any manner from responding.
18

19 RESPECTFULLY SUBMITTED this 15th day of September, 2014.

20
21 
22 Daniel Pozefsky
23 Chief Counsel
24

1 AN ORIGINAL AND TWENTY-FIVE
2 COPIES of the foregoing filed this
3 15th day of September 2014 with:


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9 mailed this 15th day of September, 2014 to:

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